

103D CONGRESS  
1ST SESSION

# S. 74

To amend the Endangered Species Act of 1973 to clarify citizen suit provisions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Endangered Species Act of 1973 to clarify citizen suit provisions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Endangered Species  
5       Act Amendments of 1992”.

6       **SEC. 2. FINDINGS.**

7       Section 2 of the Endangered Species Act of 1973 (16  
8       U.S.C. 1531) is amended—

9               (1) by striking “and” at the end of paragraph  
10              (4);

1           (2) by striking the period at the end of para-  
2 graph (5) and inserting “; and”; and

3           (3) by adding at the end the following new  
4 paragraphs:

5           “(6) an action by the Federal Government, the  
6 government of a State or political subdivision of a  
7 State, or a private party that adversely affects an  
8 endangered or threatened species or the habitat of  
9 an endangered or threatened species injures each  
10 person with a demonstrated, aesthetic, ecological,  
11 educational, historical, professional, recreational, or  
12 scientific interest in the endangered or threatened  
13 species or the habitat of the endangered or threat-  
14 ened species; and

15           “(7) compliance with this Act (including the  
16 regulations promulgated under this Act) will deter or  
17 prevent any action by the Federal Government, the  
18 government of a State or political subdivision of a  
19 State, or a private party that may adversely affect  
20 an endangered or threatened species or result in the  
21 destruction or adverse modification of the habitat of  
22 the species.”.

1 **SEC. 3. INTERAGENCY COOPERATION.**

2 Section 7(a) of the Endangered Species Act of 1973  
3 (16 U.S.C. 1536(a)) is amended by adding at the end the  
4 following new paragraph:

5 “(5) The provisions of this section shall apply to any  
6 agency action with respect to any species listed under this  
7 Act as an endangered or threatened species carried out,  
8 in whole or in part, in the United States, in a foreign  
9 country, or on the high seas.”.

10 **SEC. 4. CITIZENS SUITS.**

11 Section 11(g) of the Endangered Species Act of 1973  
12 (16 U.S.C. 1540(g)) is amended—

13 (1) by redesignating paragraphs (1) through  
14 (5) as paragraphs (2) through (6);

15 (2) by inserting after “(g) CITIZEN SUITS.—”  
16 the following new paragraph:

17 “(1)(A) A person who has by studying, visiting, or  
18 other means demonstrated an aesthetic, ecological, edu-  
19 cational, historical, professional, recreational, or scientific  
20 interest in an endangered or threatened species shall be  
21 deemed to suffer a direct and particularized injury in any  
22 instance in which any person, including the United States  
23 and any other governmental instrumentality or agency,  
24 takes action that may harm or adversely affect any threat-  
25 ened or endangered species, or result in the destruction  
26 or adverse modification of the critical habitat of the spe-

1 cies. A reasonable likelihood of action or a proposal to act  
2 shall be considered a sufficient threat to constitute an in-  
3 jury under this paragraph.

4 “(B) Each person described in subparagraph (A) who  
5 suffers an injury described in subparagraph (A) (or who  
6 has a reasonable expectation of an injury) may commence  
7 a civil suit pursuant to paragraph (2) to prevent and re-  
8 dress any injury to an endangered or threatened species  
9 and to otherwise compel the implementation of any provi-  
10 sion of this Act (including any regulation promulgated  
11 under this Act).”;

12 (3) in paragraph (2), as redesignated by para-  
13 graph (1) of this section, in the matter preceding  
14 subparagraph (A), by striking “Except as provided  
15 in paragraph (2) of this subsection any person may”  
16 and inserting “Except as provided in paragraph (3)  
17 of this subsection, any person described in para-  
18 graph (1), or who is otherwise injured, may”;

19 (4) in paragraph (3), as redesignated by para-  
20 graph (1) of this section—

21 (A) in subparagraph (A), by striking “sub-  
22 paragraph (1)(A)” and inserting “paragraph  
23 (2)(A)”;

1 (B) in subparagraph (B), by striking “sub-  
2 paragraph (1)(B)” and inserting “paragraph  
3 (2)(B)” ; and

4 (C) in subparagraph (C), by striking “sub-  
5 paragraph (1)(C)” and inserting “paragraph  
6 (2)(C)” ; and

7 (5) in paragraph (5), as redesignated by para-  
8 graph (1) of this section, by striking “paragraph  
9 (1)” and inserting “paragraph (2)” .

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